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28 CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION,
and PELICAN BAY STATE PRISON

19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 ROBIN WILSON,

22 Plaintiff,

23 v.

24 CALIFORNIA DEPARTMENT OF
25 CORRECTIONS AND REHABILITATION;
26 PELICAN BAY STATE PRISON; and DOES 1
27 through 50, Inclusive,

28 Defendants.

Case No. CV 08 3358 SBA

**STIPULATION AND [PROPOSED]
ORDER VACATING SCHEDULING
ORDER and CONDITIONAL DISMISSAL
OF ACTION**

1
2 Plaintiff Robin Wilson (hereinafter "Plaintiff") and Defendants California Department of
3 Corrections and Rehabilitation and Pelican Bay State Prison (hereinafter "Defendants") through their
4 respective counsel, respectfully submit the following stipulation and request to vacate the Order for
5 Pretrial Preparation dated October 10, 2008, and schedule a case management conference:

6 1. On April 21, 2008, Plaintiff filed the Complaint in this matter in the County of Del
7 Norte. On or about, July 7, 2008, Defendants removed this matter to the U.S. District Court for the
8 Northern District of California.

9 2. This action is an identity theft case involving Plaintiff's private personnel and personal
10 information, as well as Defendants' policies and procedures for safeguarding said information and
11 investigating suspected breaches in security. Plaintiff is a veteran correctional officer working at one of
12 California's well known prisons, Pelican Bay State Prison. Plaintiff alleges that her personnel
13 information was wrongfully and negligently made accessible to inmates who distributed it out of the
14 prison for the unauthorized use of her identity.

15 2. On October 10, 2008, the Court issued its Order For Pretrial Preparation setting forth the
16 deadlines and dates in this matter. (Docket Entry No. 20.)

17 3. Further discovery is required in this matter. The parties engaged in written discovery,
18 including propounding interrogatories and requests for the production of documents; however, to date,
19 the Defendants have produced a limited number of documents, and objected to the production of
20 additional documents on the basis of the official information privilege. Plaintiff seeks numerous
21 documents related to CDCR policies and procedures regarding safeguarding employee personnel records,
22 as well as documents evidencing multiple breaches in security and CDCR's response thereto. The parties
23 anticipate that discovery motions will be necessary to resolve these issues. The parties are having
24 difficulty locating former inmate witnesses to schedule depositions. In addition, the depositions of
25 CDCR employees have not been taken because the information needed to identify those employees
26 involved in the alleged security breaches has been withheld on the basis of the official information
27 privilege. Discovery has been temporarily put on hold because the parties believed the case was settled.
28

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2 4. On Thursday, April 9, 2009, the parties participated in Court sponsored mediation with
3 Tom LoSavio of Low, Ball & Lynch. The parties made a good faith effort to resolve the matter, and were
4 on the verge of settlement when mediation ended abruptly due to conflict with Mr. LoSavio's schedule.

5 5. On or about Monday, April 13, 2009, Plaintiff's counsel contacted counsel for the
6 Defendants to confirm that Defendants' settlement offer from mediation was still available. Counsel for
7 the Defendants indicated that the final offer from the mediation was still available, and Plaintiff's counsel
8 verbally accepted it. Defendants' counsel subsequently telephoned Plaintiff's counsel and stated that the
9 CDCR needed to confirm the agreement. A couple of days later Plaintiff's counsel was informed that
10 Defendants had withdrawn their settlement offer.

11 6. Since mediation and the verbal agreement to settle this matter, the parties worked in good
12 faith to resolve the settlement issue because the case was effectively resolved. The parties' counsel had
13 multiple discussions, exchanged addition information informally and contacted Mr. LoSavio to help
14 resolve this situation.

15 7. On or about July 6, 2009, the parties filed a joint Stipulation and [Proposed] Order
16 Modifying Scheduling Order. (Docket Entry No. 20.)

17 8. On or about August 13, 2009, this Court filed the Order of Reference for Mandatory
18 Settlement Conference. (Docket Entry No. 27.)

19 9. The matter was referred to Magistrate Judge Joseph C. Spero. On or about September 10,
20 2009, the parties attended the Mandatory Settlement Conference in a good faith effort to resolve this
21 matter.

22 10. At the Settlement Conference the parties reached a settlement agreement subject to a
23 condition subsequent. Defendant CDCR's attorney, representative at the settlement conference and
24 another representative via telephone agreed to recommend the settlement agreement to a third level
25 CDCR representative. The third level representative for the CDCR was unavailable to approve the
26 agreement despite repeated attempts to reach said individual by phone, including attempts made by
27 Magistrate Judge Spero. Accordingly, the terms and conditions of the agreement were read into record
28

1 by Magistrate Judge Spero, and approved by the parties, their representatives and respective counsel,
 2 subject to approval by the Chief Deputy General Counsel of the CDCR's Legal Affairs Office.

3 11. Since the settlement conference of September 10, 2009, Plaintiff's counsel has repeatedly
 4 contact Defense counsel for status updates regarding CDCR approval of the settlement agreement. To
 5 date, the third level CDCR representative has yet to sign off on the agreement.

6 12. The parties agreed to stay all Discovery since April of 2009 because the parties believed
 7 the case was settled, and have been working in good faith to finalize the settlement agreement. Despite
 8 said good efforts, the parties need more time to finalize the settlement agreement subject to a
 9 condition subsequent, and are unable to meet the deadlines of the October 10, 2008 Order For Pretrial
 10 Preparation.

11 For each of the forgoing reasons, the parties agree and respectfully submit that under the unique
 12 circumstances of this case, there is good cause to vacate the Court's Order for Pretrial Preparation and
 13 reschedule a Case Management Conference in three (3) months.

14
 15 IT IS SO STIPULATED.

16 DATED: November 6, 2009

**MASTAGNI, HOLSTEDT, AMICK,
 MILLER & JOHNSEN**

/s/ Anthony P. Donoghue
 Anthony P. Donoghue
 Attorneys for Plaintiff ROBIN WILSON

19
 20 DATED: November 6, 2009

EDMUND G. BROWN JR.
 Attorney General of the State of California

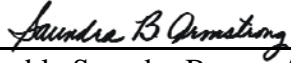
/s/ Courtney S. Lui
 COURTNEY S. LUI
 Deputy Attorney General
 Attorneys for Defendants

ORDER

The Court having been notified of the tentative settlement of this action, and it appearing that no issue remains for the Court's determination,

IT IS HEREBY ORDERED THAT this action and all claims asserted herein are DISMISSED with prejudice. In the event that the settlement is not reached, any party may move to reopen the case and the trial will be scheduled, provided that such motion within 90 days of the date this order is filed. All scheduled dates are VACATED. The Clerk shall terminate any pending matters..

DATED: 11/20/09



Honorable Saundra Brown Armstrong
United States District Judge